

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:20-cv-00027-MR**

**MICHAEL ODELL FAIR,**

**Plaintiff,**

**vs.**

**FNU NEAL, et al.,**

**Defendants.**

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**ORDER**

**THIS MATTER** is before the Court on Plaintiff's "Motion of Reconsideration Due Consideration Truth Declaration In/Based on the Law of the Spirit of Law Based on the Law of Affidavit" [Doc. 31] and "Motion for Leave to File an Amended Complaint Due Consideration Truth Declaration/Affidavit in the Spirit of Law" [Doc. 32], which the Court construes as motions to reconsider and to amend, respectively.

Pro se Plaintiff Michael Odell Fair ("Plaintiff") is a North Carolina state inmate currently incarcerated at Warren Correctional Institution in Norlina, North Carolina. Plaintiff filed this action on February 20, 2020, pursuant to 42 U.S.C. § 1983. [See Doc. 1]. On June 22, 2020, Plaintiff's Amended Complaint survived initial review as to Plaintiff's claims against Defendant FNU Neal and the Doe Defendants. [Docs. 13, 14]. On March 15, 2021,

after notice to Plaintiff, the Court dismissed all Defendants and this action without prejudice for Plaintiff's failure to show good cause for not timely returning completed summonses for the U.S. Marshal to effectuate service on Defendants. [Doc. 28; see Doc. 24].

Plaintiff now moves the Court to reconsider its Order dismissing Plaintiff's action "due to that I have brung forth Joe Doe defendant first name which is Kevin." [Doc. 31]. Plaintiff asks to be allowed to "rectify [his] complaint" because he now identifies Defendant FNU Neal as "Kevin Neal." [Doc. 31]. Plaintiff also moves for "leave to file an amended complaint adding a party." [Doc. 32]. Plaintiff states, "[s]ince the filing of the complaint the plaintiff has determined that the names of the John Doe defendant(s) is KEVIN NEAL and Sheriff BILL BEAM (added) due to Sheriff responsibility." [Id. at 1].

Plaintiff's motions will be denied. Plaintiff's motion to amend is denied because there is no pending complaint to amend. Plaintiff's action has been dismissed without prejudice. Should Plaintiff wish to file another complaint identifying the Defendants as indicated in his motions here, he may do so.<sup>1</sup> As to Plaintiff's motion to reconsider, the Court properly dismissed all the

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<sup>1</sup> The Court, of course, expresses no opinion regarding whether such claims would be timely or otherwise pass initial review.

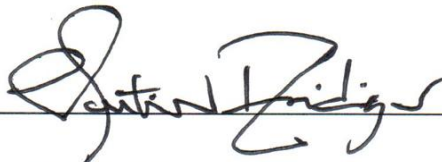
Defendants and Plaintiff's action under Rule 4(m) on Plaintiff's failure to show good cause for his not timely serving Defendants. That Plaintiff now knows the first name of one of the Defendants is of no consequence to the Court's decision. Again, if Plaintiff wishes to file a new action against these Defendants, he may do so.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Plaintiff's motions [Docs. 31, 32] are **DENIED**.

**IT IS SO ORDERED.**

Signed: April 26, 2021

A handwritten signature in black ink, appearing to read "Martin Reidinger", is written over a horizontal line.

Martin Reidinger  
Chief United States District Judge

